

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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**In the Matter of**

**Amendment of the Commission's Rules  
Regarding a Plan for Sharing  
the Costs of Microwave Relocation**

)  
)  
) **WT Docket No. 95-157**  
) **RM-8643**  
)

**To: The Commission**

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**COMMENTS OF UTC  
ON CLEARINGHOUSE BUSINESS PLANS**

Pursuant to *Public Notice* DA 96-647, released April 25, 1996, UTC, The Telecommunications Association (UTC), hereby submits its comments in response to the business plans filed by interested parties to act as the administrator for the Federal Communications Commission's (Commission) 2 GHz relocation cost-sharing mechanism. While UTC does not express a preference between the two parties that have filed business plans to act as the clearinghouse -- the Personal Communications Industry Association (PCIA) and the Industrial Telecommunications Association (ITA) -- UTC does offer its recommendations, based on the filed business plans, regarding the operation of the clearinghouse. In addition, to reduce cost and administrative complexity, UTC recommends that only one entity be designated to act as the clearinghouse.

UTC is the national representative on communications matters for the nation's electric, gas, water and steam utilities, and natural gas pipelines. UTC's members range in size from large combination electric-gas-water utilities which serve millions of customers, to smaller, rural electric cooperatives and water districts which serve only a few thousand customers each.

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All utilities and pipelines depend upon reliable and secure communications to assist them in carrying out their obligations to provide service to the public, and many operate 2 GHz systems which are subject to relocation by emerging technology licensees. In addition, as incumbent licensees, some of UTC's members may wish to participate in the cost-sharing program if such participation is permitted.<sup>1</sup> UTC therefore has an interest in this proceeding.

UTC supports the Commission's efforts to establish a cost-sharing plan for 2 GHz microwave relocation costs. As UTC has noted previously in this docket, it believes that the cost-sharing plan will both encourage the relocation of entire 2 GHz microwave systems at one time and facilitate the deployment of PCS. The clearinghouse will serve an important function in ensuring that the cost-sharing plan is administered properly and that all parties responsible for the relocation of microwave links pay their fair share.

In the April 25, 1996, *Public Notice*, the Commission noted its tentative conclusion that PCIA should serve as the clearinghouse administrator and requested that PCIA submit a business plan detailing the operational and financial aspects of its proposed clearinghouse functions. The Commission also solicited plans from other parties interested in serving as the clearinghouse. The business plans must include information regarding: (1) financial data; (2) timing; (3) accounting methods; (4) confidentiality; (5) neutrality; and (6) dispute resolution. The Commission also asked whether it should designate multiple clearinghouses.

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<sup>1</sup> The Commission has proposed to allow incumbents to participate in the cost-sharing program in its *Further Notice of Proposed Rulemaking (FNPRM)*, released April 30, 1996, in this docket.

UTC was impressed with the thoroughness of ITA's and PCIA's business plans and believes that both parties have done a commendable job in addressing the issues set forth by the Commission in the *Public Notice*. Each plan was obviously the result of a great deal of time and effort by these parties. UTC's comments focus on these areas in which the plans impact incumbents as potential participants in the cost-sharing mechanism or as entities subject to relocation by participants.

## **I. Aspects of the Business Plans**

### **A. Financial Data**

PCIA and ITA recommend different methods for collecting revenue to pay for the administration of the clearinghouse. PCIA proposes to charge a \$2,000 transaction fee to fund its clearinghouse functions, and has secured commitments from some PCS licensees to provide financial backing before sufficient fee revenue can be collected.<sup>2</sup> ITA proposes to charge a \$150 per-link registration fee and to provide optional services, such as Proximity Threshold test and microwave information on CD-ROM, to raise additional fees.<sup>3</sup>

While both approaches provide some appeal, UTC notes that ITA's reliance on revenue from optional services to pay for the cost-sharing plan makes sense only in the context of competition in clearinghouse functions. If only one entity is designated, the administration of the cost-sharing mechanism could be threatened if the revenue from the optional services is insufficient to cover costs. UTC is also concerned about the basis for ITA's revenue estimates

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<sup>2</sup> PCIA Business Plan, p. 8.

<sup>3</sup> ITA Business Plan, p. 83. It is unclear how ITA intends to collect start-up funds, but presumably ITA will cover these costs initially until reimbursement is possible through its revenue collection methodology.

from the provision of optional services. Because the market for such services cannot be estimated with any degree of accuracy, reliance on these revenues would be risky.

In addition, UTC requests that the Commission require the clearinghouse to separate out all costs associated with optional services. Some costs relating to optional services, such as production costs for software used to facilitate PCS deployment, will have little value to incumbent participants. Mandatory registration fees therefore must not incorporate those costs. UTC also requests that the FCC prohibit the clearinghouse from using confidential data in the provision of these optional services. PCS cell site and microwave relocation cost data must be kept confidential and released only to those with a direct "need to know."

PCIA's and ITA's total estimated expenses are very similar.<sup>4</sup> However, because of the many variables involved in this activity, UTC requests that the FCC require periodic financial reports to determine whether the clearinghouse is maintaining its viability while still operating on a not-for-profit basis. UTC recommends that the clearinghouse file quarterly financial reports during the first year and annual reports each year after, detailing the major elements of the clearinghouse's expenditures. These reports should be made available for public inspection.

UTC supports PCIA's proposal to reevaluate its fee level annually, and to adjust the fees to ensure that it is operating on a not-for-profit basis.<sup>5</sup> It is very important to the participants, including potential incumbent participants, that the costs be kept to a minimum. Periodic adjustments will undoubtedly be necessary to reflect changes in relocation activity and associated

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<sup>4</sup> See PCIA Business Plan, p. 8; ITA Business Plan, p. 92 (exhibit C-3).

<sup>5</sup> PCIA Business Plan, p. 10.

cost-sharing obligations. For instance, participation by incumbents may increase the registration revenues beyond initial estimates, requiring a lower registration fee.

## **B. Confidentiality**

One of the most important aspects of the clearinghouse will be its ability to administer the cost-sharing mechanism while protecting the privacy of incumbents and PCS licensees. UTC has voiced loudly its concerns regarding confidentiality in the cost-sharing mechanism<sup>6</sup> and is pleased by the FCC's acknowledgment of the importance of this requirement in making it one of the factors that clearinghouse candidates must address.

As ITA notes in its business plan, there are two sources of confidential information: (1) PCS build-out information; and (2) relocation cost-information.<sup>7</sup> UTC believes that both sources must be assured of confidentiality to the greatest degree possible to make the cost-sharing mechanism work. One way to avoid the disclosure of such information is to not require the filing of actual relocation agreements. Consistent with UTC's Comments on the *NPRM*, both ITA and PCIA recommend that only a summary of the pertinent terms of the agreement (excluding premium payments and other strategic assets)<sup>8</sup> be provided to the clearinghouse.<sup>9</sup>

UTC supports PCIA's commitment to keep information confidential, including vis-à-vis clearinghouse members, to release it only to cost-sharing entities which require such information to evaluate and support their cost-sharing obligations, and to execute a non-disclosure agreement

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<sup>6</sup> See UTC Reply Comments to *Notice of Proposed Rulemaking*, WT Docket No. 95-157 (filed January 16, 1996).

<sup>7</sup> ITA Business Plan, pp. 19-22.

<sup>8</sup> UTC notes that some agreements will contain terms unrelated to the relocation of the microwave links, but related to the deployment of PCS (such as those related to the leasing of incumbent assets). These terms are not necessary to cost-sharing and need not be disclosed.

<sup>9</sup> PCIA Business Plan, p. 13, ITA Business Plan, p. 32.

with all such participating entities.<sup>10</sup> These requirements should apply to any clearinghouse entity in order to prevent PCS licensees from using the clearinghouse as a source for information on how much they should offer incumbents for relocation. The Commission's rules make clear that the cost-sharing mechanism should not affect the negotiations between incumbents and PCS licensees to determine relocation costs for particular paths or systems.

### **C. Neutrality**

It is essential that the clearinghouse perform its duties in a neutral, non-discriminatory manner. The clearinghouse must not favor one PCS licensee over another or one group over another (i.e., PCS licensees over the incumbents). UTC is supportive of both ITA's and PCIA's comments in this regard. Both parties seem to acknowledge that participation by incumbents could be handled in essentially the same manner as participation by PCS licensees. The use of standardized registration and reporting forms will further foster neutrality. Two additional steps should be taken by clearinghouse entities to ensure neutrality:

(1) The clearinghouse function must be clearly and distinctly separate from the parent organization. While personnel and resources can be shared with the parent organization, there must be a sufficiently clear distinction between the parent and the clearinghouse to prevent cross-subsidization from the monopoly clearinghouse functions to the parent organization.

(2) Participation in the governance of the clearinghouse should be permitted for all entities affected by the cost-sharing plan. UTC supports PCIA's proposal to elect a Board of Directors for its clearinghouse subsidiary and to permit all cost-sharing participants to become members.<sup>11</sup> The Board would determine the general policies, but would not take

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<sup>10</sup> PCIA Business Plan, p. 13.

<sup>11</sup> PCIA Business Plan, pp. 4-5.

part in the day-to-day management or in the dispute resolution process. UTC believes that the Board could be invaluable in ensuring that the clearinghouse can respond effectively and in a neutral manner to the needs of all members. UTC disagrees with ITA's assertions that such a governing body would inhibit the ability of the clearinghouse to respond quickly to changing marketplace conditions.<sup>12</sup> Indeed, the Board may help position the clearinghouse to respond more effectively to changes in the marketplace because the Board will be comprised of members from various segments of that marketplace.

#### **D. Dispute Resolution**

UTC recognizes the need for the clearinghouse to play a limited role in the dispute resolution process. One aspect of this role should be educating existing and potential cost-sharing participants of their cost-sharing rights and responsibilities. Education on the cost-sharing obligations may help to avoid disputes and facilitate compliance with clearinghouse registration and other administrative procedures. Upon selection of a clearinghouse and issuance of a *Second Report and Order* determining incumbent eligibility, UTC recommends that all PCS licensees and incumbents be mailed a notification regarding the recently-adopted cost-sharing program, including an explanation of:

- the cost-sharing mechanism's goals;
- who may participate in the program;
- how to register with the clearinghouse;
- what events trigger a cost-sharing obligation;
- what responsibilities parties have regarding prior coordination notices;
- the cost-sharing formula and caps;
- transaction costs; and
- the differences between the cost-sharing obligations and the relocation obligations.

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<sup>12</sup> ITA Business Plan, p. 25.

This final point is essential. The differences between the cost-sharing rules and the relocation rules must be highlighted so that participants will not be confused by these similar -- yet distinct -- rules.

As the representative for incumbent utility and pipeline licensees, UTC is willing to work with the clearinghouse on this educational campaign and to distribute the information to its members. UTC is committed to ensuring that its members recognize their rights and responsibilities as incumbents, as potential cost-sharing participants and as potential PCS licensees.

## **II. The Commission Should Designate Only One Cost-Sharing Administrator**

In its *Public Notice*, the Commission requested comment on whether more than one clearinghouse would be feasible. In order to minimize costs and avoid potential confusion, UTC recommends that Commission designate only one clearinghouse. Although ITA raises some interesting points regarding the benefits of competition and the potential operation of simultaneous clearinghouses, it is unlikely that there will be enough relocation and cost-sharing work to justify the duplication of costs and efforts entailed in competitive clearinghouses. Competitive clearinghouses would require duplicate personnel, databases and other equipment which would increase the overall costs to participants. Competitive clearinghouses may incur other costs which would not be applicable to a single clearinghouse, such as advertising.

Competitive clearinghouses would also add a level of complexity that is unnecessary. The clearinghouses would need to coordinate activities, administrative procedures and dispute resolution procedures before operations could begin and ensure that they are applying their rules



consistently. The existence of multiple clearinghouses would create the potential for disputes between the clearinghouses that would need to be addressed by the Commission or through other appropriate means. Finally, multiple clearinghouses may confuse the participants, especially if different pricing structures or administrative procedures are used.

Given the limited nature of the clearinghouse function, the established sunset date for the cost-sharing program, the finite number of incumbent systems and the not-for-profit nature of the clearinghouse, it is unlikely that competition could thrive. Indeed, competition in clearinghouses may result in higher costs for participants and could potentially threaten the viability of one or more of the clearinghouses, thereby jeopardizing the cost-sharing mechanism.

### **Conclusion**

UTC commends ITA and PCIA for their efforts in developing business plans for the cost-sharing clearinghouse. UTC does not express a preference between these parties, but recommends that certain principles be applied regardless of the entity chosen by the Commission. These principles include ensuring that unnecessary costs are eliminated from the mandatory fees associated with the clearinghouse, maintaining the confidentiality and neutrality of the clearinghouse, and educating potential cost-sharing participants regarding their rights and responsibilities. UTC also recommends that only a single entity be designated as the clearinghouse to avoid unnecessary duplication in functions and costs.

**WHEREFORE, THE PREMISES CONSIDERED,** UTC requests the Federal Communications Commission to take action in accordance with the views expressed in these comments.

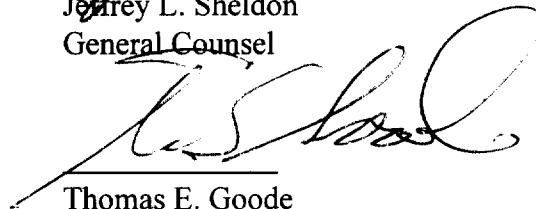
Respectfully submitted,

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Dated: June 10, 1996

## **CERTIFICATE OF SERVICE**

I, Thomas E. Goode, hereby certify that I have caused to be sent, this 10th day of June, 1996, by first class mail, postage prepaid, copies of the foregoing to the following:

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A handwritten signature in cursive script, appearing to read 'T. Goode', is written over a horizontal line.

Thomas E. Goode